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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/581,109 | 05/31/2006 | Wolfgang von Deyn | 13779-67 | 5188 |
| 45473 7590 01/05/2010 BRINKS, HOFER, GILSON & LIONE P.O. BOX 1340 MORRISVILLE, NC 27560 | | | | |
| EXAMINER | | | | |
| HOLLOMAN, NANETTE | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1612 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,109

Applicant(s)

VON DEYN ET AL.

Examiner

NANNETTE HOLLOMAN

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009 and 28 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18-22 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 18-22 and 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicants' arguments, filed September 23, 2009 and October 28, 2009, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Rejections - 35 USC § 102 (Previous Rejection)

Claims 15-17, 19-20 and 23-26 were rejected under 35 U.S.C. 102(b) as being anticipated by Furch et al. (EP 0604798). This rejection is maintained. Claims 16-17 and 23-26 are cancelled.

Applicant's Argument

Applicant argues Furch et al. relates to plant protection in the agricultural field and discloses the insecticidal and acaricidal activity of N-arylhydrazine derivatives and other compounds against crop pest of the *Coleoptera*, *Lepidotera*, and *Acarina* orders. Applicant further argues Furch fails to disclose any of the orders listed in amended claim 15. Applicant's arguments have been fully considered but they are not persuasive.

Examiner's Response

As previously asserted by the Examiner in regard to Furch et al., in claim 1 Furch et al. disclose a method for the control of insect or acarid pests which comprises contacting said pests or their food supply or habitat or breeding grounds with an N-arylhydrazine derivative as claimed by applicant. Included in the insect species are ants, bees and wasps (*Hymenoptera*) as disclosed by the Columbia Encyclopedia, and are disclosed by Applicant as non-crop pest (specification, p. 3, lines 18). Furthermore, the disclosure of Furch of preferred embodiments, i.e. orders *Coleoptera*, *Lepidoptera*, and *Acarina*, does not teach away from the broader disclosure of controlling insects, which is discussed above as meeting the limitation of the claimed order Hymenoptera. Therefore the reference encompasses the instant claims.

Claim Rejections - 35 USC § 103 (Previous rejection)

Claims 18, 21-22 and 27-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Furch et al. (EP 0604798) and in further view of Drabb, Jr. (US Patent No. 4,152,436). This rejection is maintained.

Applicant's Argument

See Applicant's arguments and Examiner's response supra in regards to Furch et al. Applicant further argues Drabb discloses a structurally different compound and the compounds of Drabb and Furch have a completely different mode of action.

Examiner's Response

In regards to Drabb, Jr., as previously asserted, the referenced art is used to disclose the method of treatment, protection of non-living organic material, livestock, and humans and not the compound. Drabb, Jr. further disclosed the use of a bait, which poses little or no hazard to non-target organisms that may frequent the infested area (column 5, lines 66-68). The rationale as disclosed in the Office Action mailed March 13, 2008, p.6, is to protect houses, animals and humans, and therefore one would be motivated to make the baits of Drabb, Jr. with the compounds of Furch et al., since baits are a known form of pesticidal composition.

Declaration

The Declaration under 37 CFR 1.132 filed October 28, 2009 is insufficient to overcome the rejection of claims 18, 21-22 and 27-36 based upon 35 U.S.C.103 (a) as being unpatentable over Furch et al. (EP 0604798) in view of Drabb, Jr. (US Patent No. 4,152,436) as set forth in the last Office action because:

Applicant discloses in the declaration filed October 28, 2009, that the compounds of Drabb and Furch behave chemically and biologically very differently and have

completely different mode of action with regard to controlling pests. Thus one would not combine the teachings of the two documents.

The Examiner submits Drabb, which is directed to treating insects (Abstract), was used to disclose the method of treatment, protection of non-living organic material, livestock, and humans and not used for its disclosure of the compound, therefore providing motivation and a reasonable expectation of success to one of ordinary skill to formulate the composition of Furch into a bait and use the composition in the method of Drabb (see Examiner's Response above).

Claims 15, 18-22 and 27-36 are rejected.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571) 270-5231. The examiner can normally be reached on Mon-Fri 800am-500pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./
Examiner, Art Unit 1612

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612